

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

JAN 09 2006

JOHN F. CORCORAN, CLERK
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BENJAMIN H. JONES,

Plaintiff,

v.

WARDEN TRACY S. RAY,
et. al.,

Defendants.

Civil Action No. 7:05-cv-00788

MEMORANDUM OPINION

By: Hon. James C. Turk
Senior United States District Judge

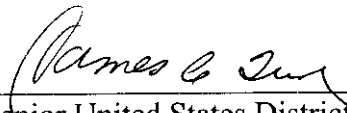
Plaintiff Benjamin H. Jones, a Virginia inmate acting pro se, brings this action as petition for writ of mandamus and a request for preliminary injunction. Because Jones appears to raise a claim that he has been treated differently than other, similarly situated inmates, the court construed and filed his motions as a complaint under the Civil Rights Act, 42 U.S.C. §1983, with jurisdiction vested under 28 U.S.C. §1343. Specifically, Jones alleges that prison officials at Red Onion State Prison wrongfully prevented him from receiving a "Christmas Package" or "Bag" from the Salvation Army. Jones does not apply to proceed in forma pauperis or prepay the \$250.00 filing fee for this civil action. Upon review of court records, the court concludes that Jones' complaint must be dismissed without prejudice, pursuant to 28 U.S.C. §1915(g).

By order and opinion dated August 12, 1998, the court held that Benjamin Jones had filed at least three prior civil actions, in forma pauperis, that were dismissed as malicious, frivolous, or for failure to state a claim, and that, under 28 U.S.C. §1915(g), he is barred from filing a civil action in forma pauperis, unless he prepays the \$250.00 filing fee or alleges facts demonstrating that he is in imminent danger of physical harm. See Jones v. Hadley, Civil Action No. 98-0066-R (W.D. Va.

1998). Clearly, the allegations summarized above do not present the slightest indication that defendants' actions place Jones in imminent danger of any physical harm whatsoever.

Inasmuch as the court has not received prepayment of the filing fee for this action and as Jones does not allege any facts in this complaint suggesting that he is in imminent danger of physical or irreparable harm, the court will summarily dismiss this action without prejudice, pursuant to § 1915(g). An appropriate order shall be issued this day.

ENTER: This 9th day of January, 2006.



Senior United States District Judge